IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1746 OF 1999

Moreshwar Chitra Mandir,
a partnership firm registered
under the Indian Partnership
Act, 1932 and havingits
office at Moreshwar Chitra
Mandir at Pen, Dist. Raigad. ...Petitioner

Versus

1. The Collector of Raigad,
District at Alibag.

2. The State of Maharashtra
(Notices to be served on
Addl. Government Pleader,
High Court, Appellate Side,
Bombay) ...Respondents.

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Shri. R.M. Purandare, counsel for the Petitioner

Shri. C.R. Sonwane, A.G.P. for Respondents.

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**CORAM: DR. S. RADHAKRISHNAN AND
SMT. V.K. TAHILRAMANI, JJ.**

DATED: 15TH DECEMBER, 2005

ORAL JUDGMENT (PER SMT. TAHILRAMANI, J.):-

1. Heard the learned counsel for the Petitioner and the learned Additional Government Pleader of respondent Nos. 1 and 2.

2. The Petitioner is a registered partnership firm running a cinema theatre at Pen since about 1985. In September 1994 in order to encourage the theatre owners, the State of Maharashtra introduced reduction of entertainment tax by 50%. Earlier all areas were divided in to three categories i.e..

(I)(A) All Municipal Corporations, Municipal Councils of Bhiwandi and Ulhasnagar, Cantonments of Pune, Solapur, Dehu Road, Deolali, Kamptee and Kirkee,

(B) cities and towns having population of one lakh fifty thousand and above

(II) cities and towns having population of above twenty five thousand but below one lakh fifty thousand and

(III) Any other areas with population upto twenty five thousand and below.

The Petitioner fell in category (III).

3. However, when the entertainment tax was reduced by 50%, only two categories of area were provided i.e. within the limits of Municipal Corporations of ‘A’ and ‘B’ class. Thereafter again the earlier three categories were restored. On account of this, in the intervening period between 16.9.1994 to 29.12.1994 many of the theatre owners falling in category (III) had paid tax at higher rate and as a result of this change their liability turned out to be lesser.

4. It is the case of the Petitioner that the Petitioner had paid excess amount of tax for the period between 1.10.1994 to 29.12.1994 to the extent of Rs.80,164/-. The Petitioner made representation dated 23.2.1995 to the Assistant Commissioner (Entertainment Tax) Konkan Bhavan, N. Mumbai requesting for adjustment of excess amount of tax paid by him for the period from 01.10.1994 to 29.12.1994 to be adjusted in future period i.e. from 30.12.1994 to 16.3.1995. However, the said representation for adjustment of excess amount was rejected and in fact the Respondent sought to recover an amount of Rs.79,930/- as tax for the period from

30.12.1994 to 16.2.1995 and a notice to that effect was issued to the Petitioner to pay an amount of Rs.79,930/- which had already been adjusted by him for the period from 30.12.1994 to 16.3.1995. Hence, this petition.

5. It is the contention of the Petitioner that for the period from 01.10.1994 to 29.12.1994 he had paid entertainment duty in excess of the duty payable by him. Hence, the amount of the duty paid in excess by him be returned to him by the Collector or it be adjusted for the next period.

6. On the other hand, Mr. Sonwane, the learned A.G.P. has relied on the circular bearing No.ENT/1094/PRA.KRA 173/T dated 27.9.1994. This circular clearly mentions that the benefit of tax reduction should be given to the public. The circular also clearly indicates that the additional amount which is taken from the public should be deposited by the concerned proprietor with the Government. Mr. Sonwane submitted that the idea behind reducing the entertainment tax was to give benefit to the public. He has submitted that the circular was not meant for the benefit of the owners

of cinema theatres but the benefit was to be given to the public. He submitted that in view of this the Petitioner who is the owner of Cinema Theatre cannot claim the benefit of the same.

7. We have perused the said circular and we have noticed that in addition to what Mr. Sonwane has submitted, the said circular also mentions that the excess amount taken by the owner of the theatre and adjusted by them for further period is to be recovered from them. As far as the price of cinema ticket is concerned, it is divided in two components. The first part is the amount charged by the theatre owner and the second part is the entertainment tax. The Petitioner had already collected excess amount of entertainment tax from the public. As mentioned in para 6 of the said Government Circular dated 24.9.1994, the amount which was refunded was due to the public and not to the Petitioner as he was the owner of the theatre. It is to be noted that the excess entertainment tax was not paid by the Petitioner from his own pocket but it was collected from the public and it was handed over to the Government. The Petitioner was not put to any loss on account of the tax being at a higher rate during

that period. It is the public who entirely bore the burden of the higher tax.

8. The learned counsel for the Petitioner fairly states that it is not possible for him to identify the members of the public and to refund the amount of excess tax to them. From the circular it is very clear that the Petitioner cannot claim any benefit of the reduction for entertainment tax and he cannot claim refund of the said amount. Nor can the Petitioner demand that the excess amount collected by him be adjusted for the period from 30.12.1994 to 16.3.1995.

9. In this view of the matter, no error can be found with the Respondents for refusing to entertain the representation of the Petitioner for refund of the amount or for adjusting the amount of tax collected for the period from 16.9.1994 to 29.12.1994 to the period from 30.12.1994 to 16.3.1995. So also the action of the authorities in issuing the notice to the Petitioner to pay an amount of Rs.79,930/- towards the tax for the period from 30.12.1994 to 16.3.1995 cannot be faulted with. Thus, we find no merit in this petition. Rule discharged. No order

as to costs.

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